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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281-0369-02]

RIN 0648-XC928

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reopening of the Commercial Harvest of Gulf King Mackerel in Western Zone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reopening.

SUMMARY: NMFS reopens the 2013-2014 commercial sector for king mackerel in the western zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ). NMFS previously projected that the commercial annual catch limit (ACL) (equal to the commercial quota) for king mackerel in the western zone of the Gulf EEZ would be reached by September 20, 2013, and closed the western zone of the Gulf to commercial king mackerel fishing in the EEZ at noon, local time, September 20, 2013, until 12:01 a.m., local time, on July 1, 2014. However, updated landings estimates indicate the commercial ACL (commercial quota) for king mackerel in the western zone of the Gulf EEZ has not been reached at this

time. Therefore, NMFS is reopening the western zone of the Gulf to commercial king mackerel fishing in the EEZ at 12:01 a.m., local time, on November 1, 2013, until 12:01 a.m., local time, on November 3, 2013. The intended effect of this temporary rule is to maximize harvest benefits for the commercial sector for Gulf king mackerel in the western zone.

DATES: The reopening is effective 12:01 a.m., local time, November 1, 2013, until 12:01 a.m., local time, on November 3, 2013.

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SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

NMFS projected that the commercial annual catch limit (ACL) (equal to the commercial quota) for king mackerel in the western zone of the Gulf EEZ would be reached on September 20,

2013, and published a temporary rule to close the western zone of the Gulf to commercial king mackerel fishing in the EEZ (78 FR 58248). However, since that closure, the Science and Research Director has received additional landings data and has determined that the commercial ACL (commercial quota) was not harvested prior to September 20, 2013. Therefore, in accordance with 50 CFR 622.8(c), NMFS is reopening the western zone of the Gulf to commercial king mackerel fishing in the EEZ at 12:01 a.m., local time, on November 1, 2013, until 12:01 a.m., local time, on November 3, 2013.

The Gulf group king mackerel western zone begins at the United States/Mexico border (near Brownsville, Texas) and continues to the boundary between the eastern and western zones at 87°31.1' W. long., which is a line directly south from the Alabama/Florida boundary.

After the commercial sector closes, no person aboard a vessel for which a commercial permit for king mackerel has been issued, except for a person aboard a charter vessel or headboat, may fish for or retain Gulf group king mackerel in the EEZ in the closed zone (50 CFR 622.384(e)(1)). During the closure, a person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the

bag and possession limits set forth in 50 CFR 622.382(a)(1)(ii) and (a)(2), provided the vessel is operating as a charter vessel or headboat (50 CER 622.384(e)(2)). A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zone, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor (50 CFR 622.384(e)(3)).

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of Gulf king mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.8(c) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued

without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because NMFS previously determined the commercial ACL (commercial quota) for king mackerel in the western zone of the Gulf EEZ would be reached by September 20, 2013, and therefore, closed the commercial sector for king mackerel in the western zone of the Gulf EEZ at noon, local time, on September 20, 2013. However, updated landings estimates indicate the commercial ACL (commercial quota) for king mackerel in the western zone of the Gulf EEZ has not been reached at this time, and therefore additional harvest is available in order to achieve optimum yield. All that remains is to notify the public that additional harvest is available under the established commercial ACL (commercial quota) and, therefore, the commercial sector for king mackerel in the western zone of the Gulf EEZ will reopen.

Prior notice and an opportunity to comment is contrary to the public interest because king mackerel is a migratory

species, making the harvest of the commercial ACL (commercial quota) for the western zone of the Gulf EEZ time-sensitive. Reopening quickly will likely make additional king mackerel available to consumers and result in revenue increases to commercial vessels.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 et seq.

Dated: October 24, 2013

Kelly Denit,
Acting Deputy Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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